**THE HON'BLE SRI JUSTICE C.V.RAMULU**

**W.P.NO.26184 OF 2000**

**ORDER:**

This writ petition is filed challenging the award made in I.D.No.174 of 1996 dated 19.07.2000, wherein the petition filed by the petitioner under Section 2-A(2) of the I.D. Act was rejected.

The petitioner is a driver appointed into the service of APSRTC, with effect from 05.06.1979. Earlier, it seems petitioner was removed from service for cash and ticket irregularities with which he was not concerned. However on raising a dispute, the Labour Court directed the management to reinstate the petitioner with continuity of service and 25% of back wages. That attained finality. More so, he was reinstated and continued as such and that being so, it appears that the petitioner remained absent from duty from 12.09.1995 to 07.10.1995 for 26 days. Therefore, he was issued with a charge sheet asking him explain as to why action should not be initiated against him. The petitioner submitted his explanation, but after conducting enquiry into the matter his services were terminated. Aggrieved by the same, he raised an Industrial Dispute before the Tribunal. It was his contention that neither the enquiry conducted was proper nor the charges were proved on the basis of the evidence available before it, or the punishment is proportionate to that of misconduct, for which a detailed counter has been filed by the management denying the allegations made by the petitioner and further asserting that the conduct of the petitioner was not so clean and the respondents have not committed any error in conducting domestic enquiry or in passing the removal order.

In support of his case, the petitioner examined himself as WW.1 and marked Exs.W.1 to W.19 and whereas on behalf of the respondent-management MW1 was examined and marked Exs.M.1 to M.6. After detailed consideration of both oral and documentary evidence, the Tribunal came to the conclusion that the domestic enquiry conducted by the management was just and proper and the charges are proved in full and the punishment of removal from service is commensurate with the gravity of the misconduct of the petitioner and rejected the claim of the petitioner. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner strenuously contended that the charges are so simple that the petitioner absented for duties for 26 days i.e. from 12.09.1995 to 07.10.1995 and even assuming that the charges are proved the punishment of removal from service is dis-proportionate to that of misconduct alleged against him. In fact the petitioner submitted an explanation along with medical certificates issued by the doctors under Exs.W6, W7, W10, W11, W.12 and W15. Without properly considering these certificates the Labour Court dismissed the claim of the petitioner holding that the charges are proved and punishment is proportionate to that of the allegations made against him and that the Labour Court erred in not properly exercising the power vested under it under Section 11-A of the I.D. Act.

Whereas, learned counsel for the respondent supported the award passed by the Labour Court and stated that the petitioner's past conduct was not clean and even otherwise the charges are proved in full and they are grave in nature, therefore, the punishment of removal from service is commensurate with that of

the misconduct proved against him. The petitioners have not made out any case calling for interference of this Court under Section 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the counsel on either side and also perused the material available on record.

The petitioner was appointed as driver with effect from 05.06.1979. Of course, he was censured once or twice and thereafter he was removed from service in the year 1995 purported to be for the misconduct of cash and ticket irregularities. Though, the petitioner was driver, he was asked to perform the duties of conductor and in that process some irregularities committed. When he was removed from service, he approached the Labour Court and the Labour Court directed the management for his reinstatement with continuity of service and 25% of the back wages. Therefore, the petitioner cannot be said that earlier he suffered any punishment etc. However, in the present case the charge is that he absented for duties for 26 days. It is not the case of the respondent that he is a habitual absentee and absented himself frequently causing inconvenience to the APSRTC. The petitioner in fact submitted Exs.W6, W7, W10, W11, W.12 and W15 to show that he was under going treatment since he was suffering with some ailment, which was not taken in to consideration properly and he was removed from service. The labour Court also did not look into these certificates and they were not believed on the ground that they are only Xerox copies. It is not the case of the respondent that the said certificates were fake. In an Industrial Dispute, it is always open to the Labour Court to accept even the Xerox copies of the documents if they are found

to be true.

Therefore, I am of the view that for a misconduct of this nature, even if the same is proved, removal of the petitioner from service cannot be said to be proportionate or commensurate with the misconduct alleged and proved. Therefore, I am in full agreement with the submissions made by the learned counsel for the petitioner that the labour Court has erred in not properly exercising the discretionary power vested in it under Section 11-A of the I.D. Act and therefore, the award passed by the labour Court is liable to be set aside. Accordingly, the award passed by the Labour Court in I.D.No.174 of 1996, dated 19.07.2000, is set aside.

In the result, the respondent-management is directed to reinstate the petitioner with continuity of service, but without any back-wages and without attendant benefits within a period of one month from the date of receipt of a copy of this order.

The writ petition is allowed to the extent indicted above. No costs.

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**C.V.RAMULU,J**

Dated: 17-04-2007
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